

17. The Reference is therefore rejected for want of prosecution by the I Party.

(Dictated to the Stenographer, transcribed by him and corrected by me).

(Sd.)

(F. L. F. ALVARES),
30-11-78.

*Presiding Officer,
Industrial Tribunal,
Bangalore.*

Order No. SWL 293 LLA, 78

Bangalore, dated the 25-10-1976—1-1-1979.

Whereas by State Govt. Order No. SWL 773 LLD 76 dated 25-10-76 the Industrial dispute between the workmen and the management of A.C.C. Vickers-Babcock Ltd., Shahabad Works, Shahabad Heavy Engineering, Shahabad, Gulbarga District, was referred to the Industrial Tribunal, Bangalore for adjudication.

And Whereas the Presiding Officer, Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette*.

By Order and in the name of the Governor of Karnataka,

(M. VASUDEVAIAH)

*Under Secretary to Government,
Social Welfare and Labour Dept.*

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute : Industrial dispute between the Workmen and the Management of Pallakarai Estate, Siddapur Post, Kodagu District.

Award of the Presiding Officer Labour Court, Mysore, published.

Read the following papers :

1. Letter No. L.C. MYS/AWARD/1125/78-79, dated 30th December 1978 from Sri P. B. Chaugule, Presiding Officer Labour Court, Mysore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT,
MYSORE

Dated 29th December, 1978.

Present :

Shri P. B. Chaugule, B.A. (Hons) LL.B.,
Presiding Officer.

Reference No. 112/1978.

I Party : Workmen represented by the General Secretary, The Coorg District Plantation and General Labour Union, Madappa Buildings, Siddapur.

Vs.

II Party : The Management of Pallakarai Estate, Siddapur Post, Coorg District.

AWARD

The Government of Karnataka by their Order No. SWL 554(2) LLD 75 dated 14th November, 1975 have referred the following points of dispute to this court for adjudication :—

POINTS OF DISPUTE

“ Whether the management of Pallakarai Estate, Siddapur Post, Coorg District is justified in refusing to provide employment to Sri Sidda, Maistry of their Estate with effect from 15-4-1975 ?

If not, is the workman entitled for reinstatement with back wages and continuity of service or to any other relief ? ”

The claim-statement filed by the I party workman is as follows :—The I party workman was appointed as a labourer in the Coffee Estate of the II party management in the year 1961 on daily wages. In the year 1968, he was promoted as Maistry and in that capacity, he worked till 15-4-1975 on which date, the II party management stopped him from work without assigning any reasons. At the time of stopping his work, he was paid Rs. 4-70 paise per day as wages. Since the date of termination he is unemployed. The II party management has not paid the worker the bonus for the year 1974-75 which he is entitled to get at the rate of 20% per annum. The action of the management is *prima facie* unsustainable because they have not conducted any enquiry before stopping him from work or have given him any opportunity to explain himself. It is submitted that the stoppage of work of the first party workman from 15-4-1975 amounts to illegal termination which has to be set aside and the second party management may be directed to reinstate the first party workman with back wages, bonus and leave with wages and continuity of service as Maistry.

The second party management has filed the counterstatement to the following effect :—The first party workman was working as a daily wage workman from 1-10-1965 till 13-4-1975. On 13-4-1975, the first party workman expressed a desire to leave the service voluntarily and to go elsewhere. Thereupon his account was looked into and settled at Rs. 800 for which he has passed a receipt on the same day. It is not true that the first party workman was working under the second party management from 1961. Whatever was due to the first party workman was paid to him and he has accepted the same in full settlement of all his claims against the second party management. In the circumstances stated above, the second party

management denies that any other further sum is due to the first party workman. The rate of bonus claimed is not correct. The bonus has been paid at 13% of the wages. It is denied that the termination of the service of the first party workman is illegal. There was no termination as such. It was a case of resignation voluntarily. As per the desire of the first party workman, he was allowed to leave the service under the second party management on the receipt of a sum of Rs. 800. For these reasons, the reference may be rejected.

On the above pleadings, the following issues were framed :—

1. Whether Sidda was appointed as labour in the coffee estate of the II party in the year 1961 on daily wages and in that capacity worked there till 1968 ?
2. Whether Sidda was promoted as Maistry in the year 1968 by the II party and in that capacity worked till 15-4-1975 ?
3. Whether the II party stopped Sidda from work on 15-4-1975 and terminated his services without assigning any reasons and at the time of stopping his work Sidda was paid Rs. 4.70 as daily wages by the II party ?
4. Whether Sidda was working as daily wage workman from 1-10-1965 till 13-4-1975 ?
5. Whether Sidda expressed to leave voluntarily the service under the II party, thereupon his account was looked into and he was paid Rs. 800 for which he has passed a receipt in full settlement of all his claims against the II party and it was a case of voluntary resignation ?
6. Whether it was a case of illegal termination and Sidda is entitled for reinstatement with back wages ?

It is the case of the first party workman that he was appointed as a labourer in the Coffee Estate of the second party management on daily wages in the year 1961 in which capacity he worked there till the year 1968. In that year, he was promoted as maistry and in that capacity, he worked till 15-4-1975 on which date the second party management stopped

him from work *i.e.*, terminated his services without assigning any reasons. As against this, it is the case of the second party management that the first party workman was appointed as a labourer on 1-10-1965 and in that capacity, he was working till 13-4-1975. On that date *i.e.*, 13-4-1975, the workman expressed a desire to leave the services. Accordingly his accounts were settled at Rs. 800 and he was paid Rs. 800 for which he has passed a receipt and there was no termination of services, but it was a case of voluntarily resignation.

The first party workman examined himself as W.W. 1 and closed his case. While the second party management examined three witnesses M.W. 1 to 'M.W. 3 and closed his evidence. The first party workman got marked the copy of the receipt dated 13-4-1975 as Ex. P. 1. While the second party management got marked the original receipt dated 13-4-1975 as Ex. R. 1. Neither the first party workman nor the second party management has adduced any evidence to show in which year the first party workman was appointed as a labourer. Therefore we are not in a position to know whether the first party workman was appointed as a labourer in 1961 as contended by the first party workman or he was appointed in the year 1965 as stated by the second party management. M.W. 3 Gangamma, who is the power of attorney holder of the second party management, has no doubt denied that the first party workman was promoted as a labour supervisor in the year 1968. According to her, there is no post of labour supervisor in their estate. However, her witness M.W. 1 Bheemaiah who was working as a writer in the Estate has clearly admitted that the first party workman was working as a maistry *i.e.*, Labour Supervisor. The second party management could have produced documents to show that the first party workman was working as a labourer till 13-4-1975. Therefore it has to be held that the first party workman was promoted as a Labour Supervisor and during the year 1975, he was working as a Labour Supervisor. In the absence of evidence, we are not in a position to know whether the first party workman was promoted as Labour Supervisor in the year 1968. However, it is clear from the evidence of the M.W. 1 Bheemaiah that the first party workman was working as a Labour Supervisor in the year 1975. According to the first party

workman, he was paid Rs. 4-75 paise as wages per day when he was stopped from work. The said fact has not been disputed by M. W. 3 Gangamma. Therefore it cannot be taken that the first party workman was paid Rs.4-75 paise as daily wages in the year 1975. The next and crucial question for our consideration is whether on 13-4-1975, the first party workman expressed a desire to leave the services under the second party management voluntarily and accordingly accounts were settled at Rs. 800 and he was paid the said amount under the Receipt Ex. R. 1 dated 13-4-1975. No doubt the receipt Ex. R. 1 mentions that the first party workman was voluntarily resigning his job and he had received Rs. 800 from the second party management in full settlement of his claims. The first party workman W.W. 1 Sidda has not only denied the execution of Ex. R. 1, but he has also denied the Receipt of Rs. 800. The second party management has examined M.W. 1 Bheemaiah and M.W. 2 Basavaraj to prove the execution of the receipt Ex. R. 1 and the payment of Rs. 800 to the first party workman. They are the attesting witnesses to Ex. R. 1. M.W. 1 Bheemaiah in chief examination itself has stated that the proprietor brought the receipt Ex. R. 1 to him and told him that he had paid Rs. 800 to the first party workman in final settlement of his claims. N.W. 1 has clearly stated that he was not present when Rs. 800 was paid to the first party workman and that he did not see the first party workman signing on the Ex. R. 1. It is thus clear that the evidence of M.W. 1 does not support the second party management. In his cross-examination, he also admitted that M. W. 2 Basavaraj did not sign on Ex. R. 1 in his presence. He made it clear that he and M.W. 2 Basavaraj did not attest Ex.R. 1 at the same time.

M.W. 2 Basavaraj has no doubt supported the case of the second party management. But it is to borne in mind that formerly he was working as a domestic servant in the household of the second party management and now he has been working as a cooly in the estate of the second party management. Therefore he is an interested witness. In his cross-examination, he has stated that M.W. 1 Bheemaiah and one Kariyappa were present at the time of payment to the first party workman. But M. W. 1 Bheemaiah has denied about his present, when the

amount was paid to the first party workman. The other witness Kariyappa has not been examined by the second party management. Apart from these inconsistencies in the evidence of M.W. 1 and M.W. 2, I find that the ink of the thumb impression of the first party workman and the ink of thumb impression of M.W. 2 Basavaraj on Ex. R. 1 are different. The said inconsistencies of material aspect of the case have not at all been explained by M.W. 3 Gangamma. M.W. 3 Gangamma argued that M.W. 1 Bheemaiah had not supported her case, as he was won over by the first party workman. If that was the fact, then the second party management could have treated him as hostile witness and could have cross-examined him. Therefore, I am unable to accept the said argument. The difference in the ink of the thumb impressions of the first party workman Sidda and M.W. 2 Basavaraj on Ex. R. 1 are also not explained by M.W. 3 Gangamma in her evidence. For the foregoing reasons, I hold that the second party management has not proved the execution of the receipt Ex. R. 1 and the payment of Rs. 800 to the first party workman by cogent and satisfactory evidence. The first party workman has stoutly denied the execution of the receipt Ex. R. 1 as well as the payment of Rs. 800/- to him. It is seen from the evidence that the management had lodged a criminal case against the first party workman alleging that he had assaulted M.W. 2 Basavaraj who was working in their house as domestic servant. But no criminal case was filed by the police against the first party workman. Being aggrieved by the same, it appears that the management stopped the first party workman from work and got up the receipt Ex. R. 1 without making any payment to the first party workman. No accounts are produced by the second party management to prove the payment of Rs. 800/- to the first party workman. Therefore the case of the second party management that the first party workman voluntarily resigned the job and the accounts were settled at Rs. 800/- and the same was paid to the first party workman under Ex. R. 1 cannot be accepted. It is therefore clear that the second party management had illegally terminated the service of the first party workman and the same is liable to be set aside. In the result, I pass an award directing the second party management to reinstate the first party workman in service in